

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant :	Choi et al.	Art Unit :	1616
Serial No. :	10/053,535	Examiner :	Frank I. Choi
Filed :	January 15, 2002	Confirmation No.:	7091
		Notice of Allowance Date: October 21, 2009	
Title :	CARBON MONOXIDE AS A BIOMARKER AND THERAPEUTIC AGENT		

MAIL STOP ISSUE FEE

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

RESPONSE TO NOTICE OF ALLOWANCE

In response to the Notice of Allowance mailed October 21, 2009, enclosed is a completed issue fee transmittal form PTOL 85b. The fee in the amount of \$1810 is being paid concurrently herewith on the Electronic Filing System (EFS) by way of Deposit Account authorization.

INTERVIEW SUMMARY AND
COMMENTS ON EXAMINER'S REASONS FOR ALLOWANCE

The Reasons for Notice of Allowance state (at page 2) that:

The Examiner's Amendment was made to avoid the claimed invention reading on background levels of carbon monoxide in the atmosphere and to be more fully supported by the disclosure with respect to effective amounts of carbon monoxide.

Applicants' representatives discussed the proposed amendment with the Examiner during telephone conferences on at least September 3, 23, 28, 29, and 30, 2009. During those conferences, the Examiner expressed concerns that the unamended claims may have read on inhalation of atmospheric levels of carbon monoxide and that there may have been issues of toxicity of carbon monoxide administration. Applicants disagreed with the Examiner's concerns for at least the reasons of record. However, Applicants agreed to the present claim amendments solely to expedite prosecution, and they reserve the right to pursue broader claims in one or more continuing applications.

Applicants do not concede that the identified limitations, e.g., "a therapeutically effective amount of an inhaled gaseous composition comprising carbon monoxide at a concentration of about 10 ppm to about 3000 ppm," are necessary to distinguish the prior art of record or to satisfy the requirements of 35 U.S.C. § 112. Applicants maintain that the claims as unamended would be allowable for at least the reasons set forth in previous responses.

In addition, dependent claims 54-56, 59, 70-73, 75-78, 105, 107, 109, 111, 115, 119, 122-124, 126-128, 130-132, 134-136, 138-140, and 159-184 are allowable on their own merits, and are allowable on the basis of a sub-combination of the recited features of the dependent claims and their respective base claims.

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Attorney's Docket No.: 13681-0003002
OCR 986 US03; BIDMC Ref.: 718-CL-Otterbe

Please apply any required charges or credits to Deposit Account No. 06-1050,
referencing Attorney Docket No. 13681-0003002.

Respectfully submitted,

Date: January 20, 2010

/RSMcQuade/

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